THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15095 OF 2007
AND
WRIT PETITION NO.16806 OF 2007

DATE : 12-10-2007

In W.P.No.15095 of 2007 :

Datla Sathyanarayana Raju .. Petitioner

And

1. The Government of Andhra Pradesh, rep. By
Its Secretary, Industries and Commerce Department,
Secretariat, Hyderabad., and 5 others. … Respondents

In W.P.No.16806 of 2007 :

Syed Rabbani .. Petitioner

And

1. The Government of Andhra Pradesh, rep. By
Its Secretary, Industries and Commerce Department,
Secretariat, Hyderabad., and 5 others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15095 OF 2007
AND
WRIT PETITION NO.16806 OF 2007

COMMON ORDER:

W.P.No.15095 of 2007 has been filed seeking a declaration that the action of the respondents 1 to 5 in granting permission to the 6th respondent for change of ramp from existing Jonnada – Alamuru Reach (Package No.2) as arbitrary, illegal and contrary to Rule 9-N of the A.P. Minor Mineral Concession Rules, 1966.

W.P.No.16806 of 2007 has been filed by the 6th respondent in W.P.No.15095 of 2007 seeking a declaration that the proceedings of the Assistant Director of Mines & Geology, dated 26-7-2007 cancelling the earlier order dated 17-7-2007 for change of ramp point and directing the petitioner to stop the quarrying in the new ramp point as arbitrary and illegal.

Since the subject-matter of both the writ petitions is one and the same and parties to both the writ petitions are common, they are heard together and decided by this common order.

For the sake of convenience, the parties shall be referred to as they are arrayed in W.P.No.15095 of 2007.

The facts in brief are as under :

Pursuant to the auction notification dated 5-10-2006 issued under the provisions of the A.P. Minor Mineral Concession Rules, 1966 (for short, 'the Rules'), for grant of leasehold rights for sand quarry in Package No.3 of Gowthari right bank, the petitioner's bid of Rs.2,06,1000/- was declared as the highest. The 6th respondent was

the auction purchaser of Package No.2. It is not in dispute that in the notification itself the ramp points for Package No.3 were shown as under :

(a) From 19/000 to 21/690 KM .. Ramp at 20.100 KM of Obulanka.

(b) From 21/690 to 24/000 KM .. Ramp at 22/982 KM of Ravulapalm.

(c) From 24/000 to 26/000 KM .. Ramp at 25/4 – 6 KM of Komarajulanka.

(d) From 16/0 to 19/0 KM .. Ramp at 17.880 KM of Merlapalem.

Similarly for Package No.2, ramp points were mentioned as under:

(a) From 19/200 to 19/400 … Ramp at 19/300 KM of Jonnada

(b) From 20/200 to 20/600 KM . Ramp at 22/300 KM of Alamuru.

As per Rule 9-N of the A.P. Minor Concession Rules, 1966, no new ramps can be made and the lessees have to use only the ramps notified.

However, after the leases were granted, the 6th respondent sought change of ramp point in respect of Package No.2 by representation dated 1-12-2006. Aggrieved by the same, the petitioner filed W.P.No.25417 of 2006. The said writ petition was disposed of by this Court by order dated 22-2-2007 recording the statement of Government Pleader that the request of the 6th respondent for change of ramp point was still under consideration.

While so, the Government vide G.O.Ms.No24. Ind. & Comm. (M1) Dept., dated 12-2-2007 transferred the subject-matter of sand auctions from the Department of Panchayat Raj & Rural Development to Industries & Commerce Department. Pursuant thereto, the A.P. Minor Mineral Concession Rules were amended so far as the leases of sand bearing areas are concerned by G.O.Ms.No.84, Industries & Commerce Department, 10-4-2007.

As per Rule 9-N of the Rules as amended by G.O.Ms.No.84, dated 10.4.2007 the change in the ramp points is permissible with the consent of the concerned Mandal Revenue Officer in case of Government land and with the consent of pattadar in case of patta lands. The said Rule 9-N as amended may be extracted hereunder :

9-N. The lessee should make use of authorized ramps and paths only for transport of sand from the quarry and not open any new ramps or paths.

It is alleged by the petitioner that taking advantage of the said amendment to Rule 9-N, the 6th respondent started laying a new ramp without any permission. Though the said fact was brought to the notice of the District Collector on 10-7-2007 requesting to take appropriate action against the 6th respondent, no action was taken. Aggrieved by the same, W.P.No.15095 of 2007 has been filed.

This Court while directing Rule Nisi by order dated 16.7.2007 in WPMP.No.19001 of 2007 directed that *status quo* with regard to laying of new ramp by the 6th respondent shall be maintained.

It appears that even before the said order could be communicated, the Assistant Director of Mines & Geology passed an order dated 17-7-2007 permitting the 6th respondent to change the ramp points as under :

(1) From KM 19/200 to KM 19/400 – Ramp at 19/3 KM of Jonnada

(2) From 20/2 to 20/6 KM – Ramp at 22/3 of Alamuru.

However, in compliance with the order of *Status Quo* granted by this Court in W.P.No.15095 of 2007, the said order dated 17-7-2007 was subsequently cancelled and the 6th respondent was directed vide proceedings dated 26-10-2007 to stop the quarrying operations in the new ramp point. The said order is under challenge in W.P.No.16806 of 2007.

I have heard the learned Counsel for both the parties and perused the material on record.

It is not in dispute that as per Rule 9-N of the Rules as amended by G.O.Ms.No.84, dated 10-4-2007, the Assistant Director of Mines & Geology is the competent authority to grant permission for a new ramp, however the same shall be with the consent of the concerned Mandal Revenue Officer in case of Government land and in case it is a patta

land the consent of the pattadar should be obtained duly verifying the claims supported by the certificate issued by the concerned Mandal Revenue Officer. It is also not in dispute that whereas the lease in favour of the 6th respondent was granted in October, 2006, the amendment to Rule 9-N was effected w.e.f. 10-4-2007 during the currency of the lease. In the circumstances, it is contended by the petitioner that Rule 9-N as amended cannot be made applicable to the leases already granted and therefore the 6th respondent cannot be permitted to lay a new ramp. On the other hand, the contention of the 6th respondent is that by virtue of the amended Rule, he is entitled for forming a new ramp after obtaining the permission of the Assistant Director of Mines & Geology.

In the counter-affidavit filed by the Assistant Director of Mines & Geology, Rajahmundry in W.P.No.15095 of 2007 it is stated that the 6th respondent made a representation stating that the sand ramp between KM 9/200 to 19/400 was washed away in the recent plots and accordingly requesting to accord permission to quarry the sand between KM 17/200 to 17/400. That apart, the Executive Engineer, GHW Division, Dhavaleswaram informed the District Level Committee (Sand Auction) that there is no objection to accord permission to change the ramp point by imposing certain conditions. In the circumstances, the Joint Collector, E.G. District who is the Chairman of the District Level Committee (sand auction) called for a report from the Executive Engineer and requested the Assistant Director of Mines & Geology to give a ramp point as recommended by the Executive Engineer, GHW Division, Dhavaleswaram as there is no feasibility to take sand in the existing ramp. Accordingly, as per the recommendations of the Executive Engineer, GHW Division, Dhavaleswaram and following the instructions of the Joint Collector, East Godavari, Assistant Director of Mines & Geology personally inspected the ramp point and having noticed that the ramp point was

19/2 was fully water-locked and that the sand available only at ramp point 17/200 to 17/400 KM referred to the matter to the District Level Committee for approval for change of the ramp point. Subsequently, the same was approved by the District Level Committee (Sand Auctions). Basing on the same, the 6th respondent vide proceedings dated 17-7-2007 was permitted to change the ramp point. It is pleaded that such change of ramp point is permissible under the amended Rule 9-N of the Rules.

Since admittedly the petitioner as well as the 6th respondent were granted their respective leases under Rules as they stood prior to the amendment under G.O.Ms.No.84, dated 10-4-2007, I am of the opinion that the 6th respondent cannot be permitted to take advantage of the amended Rule 9-N which was effected during the subsistence of the lease.

As per Rule 9-N as it stood at the time of grant of lease the ramp points were not allowed to be altered and therefore the bidders were required to make their offers taking into consideration the particular ramp points. Hence, the change in the ramp point, if any, permitted during the subsistence of the lease would undoubtedly result in prejudice to the unsuccessful bidders who made less offers having regard to the ramp points fixed in the tender notice.

Hence, I find force in the submission that the action of the Assistant Director of Mines & Geology in granting permission to the 6th respondent to change the ramp point vide proceedings dated 17-7-2007 is arbitrary and illegal. Accordingly, the said order is hereby set aside. In view of the above reasons, the order dated 26-10-2007 in W.P.No.16806 of 2007 warrants no interference.

In the result, W.P.No.15095 of 2007 is allowed and W.P.No.16806 of 2007 shall stand dismissed. No costs.

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G. ROHINI, J.

Dt. 12–10-2007
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